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To: All Rental Housing Tax Credit Developers

Notice: MFD-08-13

From: Multi-Family Department

Date: July 16, 2008

Re: **Notice of Lien and Restrictive Covenant Agreement**

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The Indiana Housing and Community Development Authority (IHCDA) are proposing to revise the Declaration of Extended Rental Housing Commitment, which is [Form E in the 2007-2008 QAP](#), with a Notice of Lien and Restrictive Covenant Agreement (See Attachment) for all Section 42 properties. The revised extended use agreement will be implemented in the 2009-2010 Qualified Allocation Plan.

IHCDA will accept public comments on the Notice of Lien and Restrictive Covenant Agreement until August 15, 2008. Please submit all comments in writing to:

J. Jacob Sipe, Multi-Family Manager  
Indiana Housing and Community Development Authority  
30 S. Meridian Street, Suite 1000  
Indianapolis, IN 46204  
[jsipe@ihcda.in.gov](mailto:jsipe@ihcda.in.gov)

**NOTICE OF LIEN AND RESTRICTIVE COVENANT AGREEMENT**

**BY**

\_\_\_\_\_

**Dated:** \_\_\_\_\_

**\*FOR USE WITH ALL DEVELOPMENTS, INCLUDING DEVELOPMENTS  
FINANCED WITH TAX-EXEMPT BONDS**

Development Name: \_\_\_\_\_

Development Location: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Development Building Identification Number ("BIN") \_\_\_\_\_

LIEN AND RESTRICTIVE COVENANT AGREEMENT  
**Low Income Housing Tax Credit Award # [Insert Award Number]**

This Lien and Restrictive Covenant Agreement (“Agreement”) is made by and between **[Insert Owner(s)]** (“Owner(s)”), the Owner(s) of certain real estate located at **[Insert Address]**, **[Insert City]**, in **[Insert County]** County, State of Indiana, more particularly described on “Exhibit A” (“Real Estate”), and the Indiana Housing and Community Development Authority (“IHCDA” or the “Authority”), a public body corporate and politic of the State of Indiana.

**I. PURPOSE**

- A. IHCDA is authorized to act as the state’s housing credit agency and administers, operates, and manages the allocation of low income housing tax credits (“LIHTC”) pursuant to Section 42 of the Internal Revenue Code, the Rental Housing Tax Credit Qualified Allocation Plan for the state of Indiana (“Allocation Plan”) and other rules, regulations, guidance and notices relating to the LIHTC Program issued by the Internal Revenue Service (“IRS”) or IHCDA, from time to time.
- B. Owner(s) received a reservation for an allocation of LIHTC credits in the amount of **[Insert Spelled-out Amount] (\$[Insert Amount])** (“Credits”), to be used to finance the construction or rehabilitation of a rental housing project proposed in Owner’s LIHTC application for the Real Estate (“Project”), which Project is subject to all of the requirements of the LIHTC Program.
- C. Owner(s) represented to the Authority, and the Authority has relied on those representations, that the Project shall comply with all applicable construction, occupancy, and affordability requirements of the LIHTC Program and that the Project shall continue to meet these requirements for the LIHTC compliance period, as defined below.
- D. The LIHTC Program requires that certain use restrictions be imposed upon any real estate assisted by Credits awarded by IHCDA to ensure that the benefits of such Credits remain with the intended beneficiaries under the LIHTC Program, as well as to comply with the Code.
- E. Specifically, IHCDA requires restrictive covenants be placed on the Project that will remain in force and effect for the entire period required by the IRS, the allocation Plan and any extended use period selected by Owner(s) (“Compliance Period”), which period is indicated below by an “X”:

<b>Selection Insert “X”</b>	<b>Owner’s Commitment</b>	<b>Compliance Period</b>
	Tenant Lease/Purchase	15 years
	Section 42, plus 15 years	30 years
	Section 42, plus 20 years	35 years
	Section 42, plus 25 years	40 years

**II. COVENANTS AND OBLIGATIONS**

The parties agree that the reservation by IHCDA of Credits to be allocated to Owner(s) when the Project is placed in service, constitutes adequate consideration for the obligations undertaken by Owner(s) in this Agreement. As of the date entered below, Owner(s) hereby imposes the following restrictive covenants upon the Real Estate and warrants, grants and conveys to IHCDA a lien upon the Real Estate for the duration of the compliance Period (the “Lien”). In consideration of these mutual undertakings and covenants, the parties further agree as follows:

- A. As a condition precedent to the availability of Credits for the Project, Owner shall deliver to and record this Agreement with the Office of the Recorder for \_\_\_\_\_ County, Indiana, in which the Real Estate is located, to create a covenant running with the land upon which the Project is situated.

- B. Owner(s) and the Project must continuously comply with Section 42 and other applicable sections of the Internal Revenue Code of 1986 and all Treasury Regulations and rulings relating to LIHTC Credits, each as amended from time to time (collectively the “Code”), as well as the occupancy, development, and rent restriction requirements of the Code, the Allocation Plan and the additional commitments Owner(s) made to IHCDCA resulting in issuance of Form 8609, which Owner(s) agreed to satisfy in the initial and final applications (collectively, the “Occupancy Restrictions”), all of which are incorporated herein by reference. Such Occupancy Restrictions include, but are not limited to:
1. Owner(s) shall lease not less than \_\_\_\_% of the units in the Project to individuals or families whose income is 30% or less of area median gross income (including adjustments for family size), (“AMI”), not less than \_\_\_\_% of the units in the Project to individuals or families whose income is 40% or less of AMI, not less than \_\_\_\_% of the units to individuals or families whose income is 50% or less of AMI, and not less than \_\_\_\_% of the units to individuals or families whose income is 60% or less of AMI (collectively “Qualifying Tenants”), and shall ensure that the “applicable fraction” (as defined in Section 42(c)(1)(B) of the Code) for each building for each taxable year in the Compliance Period shall not be less than \_\_\_\_percent (\_\_\_\_%).
  2. Owner(s) shall lease not less than \_\_\_\_% of the units in the Project at a rent that is at or below the 30% AMI rent level; and not less than \_\_\_\_% of the units in the Project at a rent that is at or below the 40% AMI rent; and not less than \_\_\_\_% of the units in the Project at a rent that is at or below the 50% AMI rent; and not less than \_\_\_\_% of the units in the Project at a rent that is at or below the 60% AMI rent.
  3. Subject to the prohibition against disposing of a portion, and not all, of a building to which this Agreement applies, Owner(s) may sell, transfer or exchange the Project; provided, however, such sale, transfer or exchange shall be voidable by the Authority if the Authority is not first notified in writing and provided with the identity of the buyer and any other information requested by the Authority. This subparagraph shall not act to waive any other restriction on sale, transfer or exchange of the Project.
  4. Owner(s) shall not refuse to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.
  5. Neither the Owner nor representatives acting on behalf of the Owner shall 1) evict or terminate the tenancy of an existing tenant (other than for good cause) during the Compliance Period or the three-year period immediately following termination of this Agreement as provided herein, or 2) increase the gross rent with respect to any unit not otherwise permitted under Section 42.
  6. IHCDCA and Qualifying Tenant(s) (or either or all of them) are entitled, for any breach of this Agreement, to enforce specific performance by Owner of its obligations under this Agreement in a state court of competent jurisdiction, in addition to all other remedies provided by law or in equity. Owner unconditionally agrees that the beneficiaries of Owner’s obligations under this Agreement cannot adequately be compensated by monetary damages in the event of any such breach.
- C. Owner(s) acknowledges that the financial assistance received through the LIHTC Program represents good and valuable consideration for this Agreement and that these restrictions on the use of the Project are consistent with the statutes, regulations, terms, conditions, and requirements for the LIHTC Program as administered by IHCDCA.
- D. Owner shall indemnify, save and hold harmless the Authority, its directors, officers, employees and agents from any and all claims, losses, damages or expenses (including reasonable attorneys’ fees) arising out of or in any way related to failure or alleged failure of the Owner to strictly and timely perform its obligations under this Agreement, or as a result of allocation of the Credits to the Project, or the recapture of any portion of the Credits by any appropriate governmental agency.

- E. The Lien may be foreclosed and the restrictive covenants may terminate on the date the Project is acquired by foreclosure in accordance with the laws of the State of Indiana, or instrument in lieu of foreclosure, provided that IHCD A has received prior notice of the default and foreclosure action and an opportunity to participate at its discretion in any workout negotiation(s) with the mortgage holder(s). The foregoing shall not apply to the Project if the IRS or the Authority determines that such acquisition is part of an arrangement with the Owner, or its successors or assigns, a purpose of which is to terminate the Compliance Period.
- F. Notwithstanding anything to the contrary in this Agreement, IHCD A and Owner(s) agree that the Lien and IHCD A's interest in the Project are subordinate in priority to any Senior Debt, as defined below. As used in this Agreement, "Senior Debt" means any indebtedness of Owner(s) to any lender that has provided financing to Owner(s) for the purchase, construction, rehabilitation, or refinancing of the Project prior to the date the Project is completed and placed in service. This Agreement will not be subordinate to any debt incurred by Owner(s) subsequent to the time the Project is completed, unless the proposed lender has consented to the terms of this Agreement.
- G. This Agreement shall be binding upon the Project and shall constitute covenants running with the land. Owner(s) agree that any and all requirements of the laws of the State of Indiana which must be satisfied so that the provisions of this Agreement constitute valid and binding deed restrictions and covenants running with the Real Estate shall be satisfied in full. Except as otherwise provided herein, the covenants and restrictions contained herein shall survive and be effective throughout the Compliance Period, regardless of whether any contract, deed or other instrument hereafter executed conveying the Real Estate or a portion thereof provides that such conveyance is subject to this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

This Lien and Restrictive Covenant Agreement is effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

IN WITNESS WHEREOF, Owner(s) and Agency have caused this Agreement to be signed by duly authorized representatives, on the day and year first written above.

OWNER(S): [Insert Name of Owner]

[Insert Name of Co-Owner]

By: \_\_\_\_\_

By:

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

STATE OF INDIANA )

) SS:

COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, in and for said County and State, personally appeared \_\_\_\_\_, who acknowledged that the foregoing Lien and Restrictive Covenant Agreement was executed in such capacity as its voluntary act and deed and that the foregoing representations are true and correct.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Insert Name of Notary]

A Resident of \_\_\_\_\_ County, Indiana

My Commission Expires: \_\_\_\_\_

AGREED TO this \_\_\_\_\_ day of \_\_\_\_\_ by the Authority.

INDIANA HOUSING AND COMMUNITY  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Sherry Seiwert, Executive Director

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, in and for said County and State, personally appeared \_\_\_\_\_, who acknowledged that the foregoing Lien and Restrictive Covenant Agreement was executed in such capacity as its voluntary act and deed and that the foregoing representations are true and correct.  
WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Insert Name of Notary]

A Resident of \_\_\_\_\_ County, Indiana

My Commission Expires: \_\_\_\_\_

This instrument was prepared by Deborah K. Hepler (18003-49), General Counsel, Indiana Housing and Community Development Authority, 30 South Meridian Street, Suite 1000, Indianapolis, IN 46204 (317) 232-7777.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law, /s/ **insert name of preparer**